

FILED

1 RICHARD H. CLOSE (Bar No. 50298)  
 rclose@gilchristrutter.com  
 2 THOMAS W. CASPARIAN (Bar No. 169763)  
 tcasparian@gilchristrutter.com  
 3 KEVIN M. YOPP (Bar No. 218204)  
 kyopp@gilchristrutter.com  
 4 GILCHRIST & RUTTER  
 Professional Corporation  
 5 1299 Ocean Avenue, Suite 900  
 Santa Monica, California 90401-1000  
 6 Telephone: (310) 393-4000  
 Facsimile: (310) 394-4700

2014 APR 28 PM 3:34

CLERK'S OFFICE  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES

BY:

7 MATTHEW W. CLOSE (Bar No. 188570)

8 mclose@omm.com

9 DIMITRI D. PORTNOI (Bar No. 282871)

dportnoi@omm.com

10 O'MELVENY &amp; MYERS LLP

11 400 South Hope Street

Los Angeles, CA 90071-2899

Telephone: (213) 430-6000

Facsimile: (213) 430-6407

12 Attorneys for Plaintiff  
 13 Colony Cove Properties, LLC

## 14 UNITED STATES DISTRICT COURT

## 15 CENTRAL DISTRICT OF CALIFORNIA

CV14-03242-

PSG(PJWx)

16  
 17 COLONY COVE PROPERTIES, LLC,  
 a Delaware limited liability company;

Case No.

18 Plaintiff,

## COMPLAINT FOR

19 v.

20 1. Violation of the Takings Clause of  
 21 the Fifth Amendment  
 22 (Under 42 U.S.C. § 1983)23 CITY OF CARSON, a municipal  
 corporation; CITY OF CARSON  
 MOBILEHOME PARK RENTAL  
 REVIEW BOARD, a public  
 administrative body; and DOES 1 to 10,  
 inclusive;24 2. Violation of the Due Process  
 25 Clause of the Fourteenth  
 26 Amendment  
 27 (Under 42 U.S.C. § 1983)

28 Defendants.

3. Declaratory Relief

## AND DEMAND FOR JURY TRIAL

LAW OFFICES  
**GILCHRIST & RUTTER**  
 PROFESSIONAL CORPORATION  
 1299 OCEAN AVENUE, SUITE 900  
 SANTA MONICA, CALIFORNIA 90401-1000  
 TEL (310) 393-4000 • FAX (310) 394-4700

1 Plaintiff Colony Cove Properties, LLC (“Colony Cove”) for its Complaint  
 2 against the City of Carson and the City of Carson Mobilehome Park Rental Review  
 3 Board (sometimes collectively, the “City”) alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, 2201, 2202,  
 6 and 42 U.S.C. § 1983.

7 2. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because  
 8 the City is located within this district, and a substantial part of the events and/or  
 9 omissions giving rise to Colony Cove’s claims occurred in this district.

10 **NATURE OF THE ACTION**

11 3. The City’s rent control restrictions have been applied against Colony  
 12 Cove in a manner that exceeds the limits of state authority under the U.S.  
 13 Constitution.

14 4. In 2006, Colony Cove bought a 404-space mobilehome park in the  
 15 City. At that time, Colony Cove had a reasonable expectation that it could profit  
 16 even under the then-existing rent control law. Thereafter, the City changed the rules  
 17 for determining allowable rents. Specifically, the City stopped considering a park  
 18 owner’s bona fide, third-party debt service expense incurred in connection with the  
 19 purchase of the mobilehome park in an arms-length market transaction. Based on  
 20 this change, the City then set rents at unreasonably low levels. This forced Colony  
 21 Cove to operate at a loss for over five years (sometimes at a loss exceeding \$1  
 22 million per year). During this five-year timeframe, Colony Cove suffered losses of  
 23 approximately \$4 million.

24 5. In 2012, for the first time in five years, the City finally permitted  
 25 Colony Cove to earn a profit after forcing it to suffer losses year-after-year. The  
 26 profit Colony Cove recovered in that year, however, was only approximately  
 27 \$180,000, and represented a return of approximately 1% on Colony Cove’s equity  
 28 investment. This return was far less than comparable real-estate investments were

1 making, even in comparable, rent-controlled jurisdictions. One percent of an equity  
 2 investment is also far less than any reasonable investor would have expected when  
 3 purchasing Colony Cove in 2006. These restrictions, therefore, do not permit  
 4 Colony Cove to make a reasonable profit. Far from it. By altering the manner in  
 5 which it treated bona fide debt service expenses, the City has essentially forced  
 6 Colony Cove to shoulder an affordable housing burden that should be borne by the  
 7 City taxpayers as a whole.<sup>1</sup>

8       6. This Section 1983 action seeks to have the City's rent control law  
 9 declared unconstitutional, as-applied to Colony Cove, because it constitutes an  
 10 unlawful and/or an uncompensated taking of Colony Cove's property. This action  
 11 also seeks damages and/or just compensation from the City for the unlawful and  
 12 unconstitutional application of its rent control law and for violating Colony Cove's  
 13 due process rights, and/or an injunction against the City enjoining it from applying  
 14 its rent control law to Colony Cove.

#### PARTIES

15       7. Colony Cove is a Delaware limited liability company and the owner of  
 16 Colony Cove Mobile Estates, a luxury mobilehome park located at 17700 S. Avalon  
 17 Boulevard, Carson, California 90746 (the "Park"). Constructed in 1975, the Park is  
 18 one of the most luxurious mobilehome parks in the City of Carson, providing its  
 19 residents with amenities including a large, central clubhouse-style building with a  
 20 kitchen, banquet room/auditorium, swimming pool, Jacuzzi, billiards/card room,  
 21 library/television room, exercise room, indoor spa and a laundry room. A  
 22 recreational vehicle storage area is available, and the residents may rent spaces at an  
 23

---

24  
 25 <sup>1</sup> In fact, Colony Cove residents are paying approximately half the rent they would  
 26 otherwise be paying if Colony Cove were permitted to charge market rate rents  
 27 (average rent at Colony Cove is approximately \$500 when market rents would be in  
 28 excess of \$1,000). Colony Cove could profit and earn a reasonable return (and  
 would have) even with below-market rents.

1 additional cost. A pet exercise run is provided for residents' use. Gated security  
 2 services are provided on a 24-hour basis. Water, sewer, and trash collections  
 3 services are also provided for the residents. The Park has 404 spaces (also known as  
 4 lots or pads) available for mobilehomes, 403 of which are rented to residents. One  
 5 space is provided for the Park's manager.

6       8. Defendant City of Carson is a municipal corporation located within the  
 7 State of California and in the County of Los Angeles.

8       9. Defendant City of Carson Mobilehome Park Rental Review Board (the  
 9 "Board") is a public administrative body created by the City's Mobilehome Space  
 10 Rent Control Ordinance to hear and determine applications of property owners for  
 11 rent adjustments.

12      10. Colony Cove is unaware of the true names, involvement, or capacities,  
 13 whether individual, corporate, associate, or otherwise, of Defendants Does 1 to 10  
 14 (the "Doe Defendants"), and therefore sues them by such fictitious names. Colony  
 15 Cove is informed and believes, and based upon such information and belief alleges  
 16 that each of the Doe Defendants is responsible for the actions described herein, has  
 17 conspired with the other Defendants herein, was the agent, servant, employee, or  
 18 alter ego of the remaining Defendants, or is otherwise responsible for the  
 19 complained of actions. Colony Cove will amend this Complaint when it learns the  
 20 true names, involvement, and capacities of the Doe Defendants.

## **FACTUAL BACKGROUND**

### **A. The City of Carson's Rent Control Law.**

21      11. In 1979, the City enacted a rent control ordinance, thereafter amended  
 22 from time to time, known as the Mobilehome Space Rent Control Ordinance (the  
 23 "Ordinance"). Among other things, the Ordinance created the Board, which was  
 24 delegated the authority to receive, hear, and determine applications for rent  
 25 increases. No review of the decision of the Board is permitted by any other  
 26 administrative body. Review is permissible under California law only by pursuing a  
 27  
 28

1 writ of administrative mandate upon a showing that the Board's decision was not  
2 supported by substantial evidence with substantial deference to the Board's  
3 determinations.

4       12. In addition to the Ordinance, the City has adopted Guidelines for  
5 Implementation of the Mobilehome Space Rent Control Ordinance (the  
6 "Guidelines" and collectively with the Ordinance, the "Rent Control Law"), which  
7 bind the Board's procedures and decision in acting upon applications for rent  
8 increases by owners of mobilehome parks. The Guidelines are also published to  
9 advise property owners and the public how the Board and City will implement the  
10 Ordinance and apply the Rent Control Law. The Board may not depart from these  
11 Guidelines, which have the force of law. Even if the Guidelines did not have the  
12 force of law and even if the Board reserved the power to depart from the Guidelines,  
13 the Guidelines are still designed and intended to, and in fact do, set the reasonable  
14 expectations of investors and park owners in the City. That is why the Guidelines  
15 were adopted and published externally.

16       13. Mobilehome parks are the only properties in the City subject to any  
17 rent control law. No other rental property types (e.g., apartments, houses, and  
18 condominiums) in the City face any rent control measures.

19       14. The City's Rent Control Law does not permit an automatic increase  
20 based on a set formula. Instead, the Rent Control Law requires a park owner to  
21 prepare and submit a rent increase application – at great time and expense – to  
22 obtain any rent increase, no matter how small. The Board may then grant such  
23 increases "as it determines to be fair, just and reasonable." In making its decision  
24 on a general rent increase, the Board must consider eleven factors articulated by the  
25 Ordinance, as well as any other relevant factors, and treat no one factor as  
26 dispositive.

27       15. Section IV of the Guidelines also permits park owners to file another  
28 separate rent increase application if a rent increase is necessary because the park

1 cannot earn a “fair return” without an increase greater than that permitted by  
 2 application of the general rent increase factors in the Ordinance.

3       16. This fair return application requires an applicant to submit all the  
 4 information required by a general rent increase application, and further requires the  
 5 applicant to submit: (1) an appraisal of the park at the time of purchase; (2)  
 6 information about down payments, equity, and refinancing; (3) information  
 7 regarding capital improvements; (4) information about the rate of return being  
 8 earned by the applicant’s park; and (5) information about the rates of return being  
 9 earned by comparable mobilehome parks in jurisdictions with rent control and  
 10 without rent control. Both the appraiser and any expert providing an opinion on  
 11 rates of return must also be present at the hearing for testimony and questioning.

12       17. At the time it purchased the Park, and still to this day, Colony Cove has  
 13 been reasonably informed and understands from its diligence that, prior to Colony  
 14 Cove’s acquisition of the Park, the City always (or virtually always) considered a  
 15 park owner’s debt service when disposing of fair return rent applications. This was  
 16 the Plaintiff’s reasonable and informed understanding at the time it purchased the  
 17 Park based on how other owners rent applications had been analyzed as well as  
 18 judicial decisions in the state considering the City’s Rent Control Law.

19       18. For example, the Guidelines in effect at the time Colony Cove  
 20 purchased the Park provide that debt service is an allowable expense, even if  
 21 incurred after the adoption of the relevant rent-control regulations, if it is “[d]ebt  
 22 [s]ervice necessarily incurred to operate the park … if the financing arrangements  
 23 were prudent and consistent with customary business practice.” Guidelines,  
 24 § II(A)(2), subds. (d) & (e). Even debt service incurred to purchase a park is  
 25 allowable if “the purchase price paid was reasonable in light of rents allowed under  
 26 the Ordinance and involved prudent and customary financing practices.” *Id.*  
 27 § II(A)(2), subd. (f).

28

1           **B. Colony Cove Purchases the Park with a Reasonable Expectation  
2           That Its Debt Service Would Be Considered by the City When  
3           Setting Rent Levels.**

4           19. Non-party Grossman Properties developed the Park in 1976 and owned  
5 it for thirty years. Colony Cove has no connection to Grossman Properties. On or  
6 about April 4, 2006, Colony Cove purchased the Park for approximately  
7 \$23,050,000 from Grossman Properties. The seller of Colony Cove had listed the  
8 Park for sale at a price exceeding \$28 million. Grossman Properties received other  
9 offers for the Park that were around the same price as the \$23,050,000 purchase  
10 price that Colony Cove paid. The purchase price that Colony Cove paid represented  
11 fair market value of the Park and was commercially reasonable.

12           20. Colony Cove's purchase included a down payment of \$5,050,000,  
13 which represented Colony Cove's initial equity investment in the Park.

14           21. The remaining approximately \$18 million was financed with a  
15 reputable lender, G.E. Capital, using common and commercially reasonable  
16 financing terms, including but not limited to the interest rate and the loan-to-value  
17 ratio. Colony Cove is informed and believes, and based thereon alleges, that G.E.  
18 Capital could not have made the \$18 million (approx.) loan to Colony Cove unless  
19 G.E. Capital had concluded that the \$23 million (approx.) purchase price was  
20 reasonable and not unfair. The loan and financing terms from G.E. Capital were  
21 prudent and consistent with customary business and financing practice, as the  
22 members of Colony Cove have substantial experience in the ownership and  
23 operation of mobilehome parks. The City does not dispute the amount of the G.E.  
24 Capital loan or Colony Cove's debt service under that loan.

25           22. Under the City's Rent Control Law as it existed at the time Colony  
26 Cove purchased the Park in April 2006, Colony Cove was entitled to include debt  
27 service as an allowable expense, and had a commercially reasonable expectation that  
28 its debt service expenses would be included as an allowable expense when the

1 Board set rents. That reasonable belief was based in part on the terms of the  
 2 Ordinance and Guidelines and also based on how the Board had analyzed and  
 3 calculated rents previously in the City. Colony Cove could not reasonably foresee  
 4 or predict that the Board would suddenly deem its debt service on the \$18 million  
 5 (approx.) purchase money loan from G.E. Capital to be unreasonable or irrelevant in  
 6 connection with fixing rents.

7       **C. On September, 28, 2007, Colony Cove Submitted General and Fair  
 8              Return Rent Increase Applications.**

9       23. On or about September 28, 2007, Colony Cove submitted both a  
 10 general and a fair return rent increase application to the City (collectively, the "Year  
 11 1 Applications"). Colony Cove submitted all of the required information, including  
 12 the additional documentation required for a fair return application.

13       24. Together, the Year 1 Applications demonstrated that Colony Cove  
 14 operated at a loss totaling \$1,082,191 for its first year of ownership and would  
 15 continue to do so unless Colony Cove received relief in the form of the requested  
 16 rent increase. This loss is based on actual expenditures by Colony Cove, which the  
 17 City does not dispute that Colony Cove made.<sup>2</sup>

18       25. Colony Cove presented evidence that various quantitative  
 19 methodologies, performed by different experts, all arrived at the same conclusion –  
 20 a rent increase of approximately \$200 per space per month is necessary for Colony  
 21 Cove to earn a fair return on its investment.

22       26. In sharp contrast to the approximately \$200 figure presented by Colony  
 23 Cove, City staff prepared a report recommending that the Board grant a \$15.65 per

---

24       2 While the City did not dispute that these were actual expenditures made by Colony  
 25 Cove, as part of the rent setting process, the City excluded actual expenses that it  
 26 believes should not be considered when setting rents (in addition to refusing to  
 27 consider debt service). While Colony Cove disagrees with some of the City's  
 28 expense exclusions, even accepting the City's expense exclusions, Colony Cove still  
 operated at a loss of \$311,972.

1 space, per month rent increase. To arrive at this figure, the Board decided to ignore  
 2 and disregard Colony Cove's debt service. By ignoring Colony Cove's debt service,  
 3 the Board ensured that Colony Cove would be forced to operate the Park at  
 4 substantial cash losses.

5       27. The Board apparently concluded that debt service amounts could be  
 6 manipulated and therefore should be ignored, despite the fact that there was no  
 7 evidence that Colony Cove and G.E. Capital conspired to or did manipulate the debt  
 8 service in this case.

9       28. Because the Board had not previously ignored third-party, purchase  
 10 money debt service to Colony Cove's informed belief, Colony Cove at all times  
 11 reasonably expected that the Board would decide rent increases by determining a  
 12 fair rate of return and by consideration of the factors set forth in the Ordinance and  
 13 the Guidelines including debt service expenses obtained in a commercially prudent  
 14 fashion. The abandonment of debt service as a relevant factor in determining rents  
 15 was a circumstance Colony Cove could not have reasonably expected and operated  
 16 as a change in law.

17       29. Despite the evidence that Colony Cove was operating at a loss and that  
 18 a rent increase of approximately \$200 per space per month was necessary for  
 19 Colony Cove to earn a fair return, the City only approved a \$36.74 per space rent  
 20 increase. Even with this increase Colony Cove continued to incur a six-figure loss  
 21 yearly.

22       30. The City reached this result by refusing to consider Colony Cove's debt  
 23 service and could not have reached it had debt service been properly considered.

24       **D. The Year 2 Applications and Rent Board Decision.**

25       31. On or about September 28, 2008, Colony Cove submitted both a  
 26 general and a fair return rent increase application to the City based on income and  
 27 expense data from its second full year of ownership (collectively, the "Year 2  
 28 Applications"). Colony Cove again submitted all of the required information,

1 including the additional documentation required for a fair return application.  
 2 Together, the Year 2 Applications demonstrated that Colony Cove continued to  
 3 operate at a loss. This time the annual loss totaled \$812,177 according to Colony  
 4 Cove's books.

5       32. The City again excluded a substantial amount of Colony Cove's  
 6 expenses. After the City's expense exclusions, however, Colony Cove lost even  
 7 more money the second year of ownership than it did the first year – a loss of  
 8 \$455,571 for Year 2.

9       33. In written submissions and through testimony at the hearing, Colony  
 10 Cove presented evidence that, using the City's view of Colony Cove's expenses, a  
 11 rent increase of approximately \$250 was necessary to achieve a fair return.

12       34. Dr. Baar again advocated the MNOI analysis, because it "permit[s] an  
 13 equal rate of growth ... regardless of [the owner's] particular purchase and financing  
 14 arrangements."

15       35. The Board again refused to consider any of the evidence contained in  
 16 the fair return application and ignored Colony Cove's debt service payments.

17       36. Despite the undisputed evidence that Colony Cove again operated at a  
 18 substantial loss, the Board only approved a \$25.02 per month, per space rent  
 19 increase based on the Year 2 Applications. This rent increase was lower than the  
 20 previous year's increase even though, according to the City's calculations, Colony  
 21 Cove lost more money. That increase forced Colony Cove to continue incurring a  
 22 substantial loss. Once again, the City refused to consider Colony Cove's debt  
 23 service.

24       **E. The Year 3 Applications and Rent Board Decision.**

25       37. On or about September 29, 2009, Colony Cove submitted both a  
 26 general and a fair return rent increase application to the City based on income and  
 27 expense data from its third full year of ownership (collectively, the "Year 3

1 Applications"). Colony Cove again submitted all of the required information,  
 2 including the additional documentation required for a fair return application.

3       38. Together, the Year 3 Applications demonstrated that Colony Cove  
 4 continued to operate at a loss. As in Year 2, the Year 3 annual loss again exceeded  
 5 \$800,000 according to Colony Cove's calculations.

6       39. The City again excluded a substantial amount of Colony Cove's  
 7 expenses totaling over \$600,000. Even accepting these exclusions, however,  
 8 Colony Cove again operated at loss of approximately \$200,000.

9       40. City Staff recommended a \$4.19 per space, per month rent increase  
 10 based on the consumer price index ("CPI"). A CPI adjustment does not consider  
 11 Colony Cove's investment returns, much less compare them to like investments.  
 12 The methodology merely takes existing rents and adjusts them based on the increase  
 13 in the CPI. In other words, the City Staff's recommendation did not even purport to  
 14 take into account Colony Cove's investment and returns or the circumstances  
 15 common to mobilehome parks in the area. The City Staff's approach also ignored  
 16 the debt service payments that Colony Cove was actually paying to G.E. Capital.

17       41. The Board accepted Staff's recommendation and made a final decision  
 18 increasing Colony Cove's rents by \$4.19 per month, per space. That increase forced  
 19 Colony Cove to continue incurring a substantial loss. Once again, the City refused  
 20 to consider Colony Cove's debt service.

21           **F. The Year 4 Applications and Rent Board Decision.**

22       42. On or about September 29, 2010, Colony Cove submitted both a  
 23 general and a fair return rent increase application to the City based on income and  
 24 expense data from its fourth full year of ownership (collectively, the "Year 4  
 25 Applications"). Colony Cove again submitted all of the required information,  
 26 including the additional documentation required for a fair return application.

27

28

LAW OFFICES  
**GILCHRIST & RUTTER**  
 PROFESSIONAL CORPORATION  
 1289 OCEAN AVENUE, SUITE 900  
 SANTA MONICA, CALIFORNIA 90401-1000  
 TEL (310) 393-4000 • FAX (310) 394-4700

1           43. Together, the Year 4 Applications demonstrated that Colony Cove  
 2 continued to operate at a loss. The Year 4 annual loss exceeded \$1,000,000  
 3 according to Colony Cove's books.

4           44. City Staff recommended a \$17.83 per space, per month rent increase  
 5 but once again excluded factors specific to Colony Cove and the Park, including  
 6 debt service. All legitimate methodologies submitted by qualified experts suggested  
 7 that a \$200 to \$300 rent increase was necessary.

8           45. The Board accepted Staff's recommendation and made a final decision  
 9 increasing Colony Cove's rents by \$17.83 per month, per space. That increase  
 10 forced Colony Cove to continue incurring a substantial loss. Once again, the City  
 11 refused to consider Colony Cove's debt service.

12           **G. The Year 5 Applications and Rent Board Decision.**

13           46. On or about March 2, 2012, Colony Cove submitted general and fair  
 14 return rent increase applications to the City based on 2011 expenses. Colony Cove  
 15 again suffered a six-figure loss. On October 10, 2012, the City passed a resolution  
 16 regarding Colony Cove's rent increase application. Instead of increasing rents by  
 17 approximately \$300 as required by governing law and the City's rent control  
 18 scheme, the City awarded Colony Cove a *temporary* rent increase of only \$11.20.

19           47. The City continued to ignore Colony Cove's investment and refused to  
 20 compare Colony Cove's returns to returns on comparable real estate investments.

21           48. Although Colony Cove eventually earned a small profit in 2012, that  
 22 profit was well below what Colony Cove could have earned with reasonable, below-  
 23 market rents.

24           **H. Federal and State Litigation Between Colony Cove and the City.**

25           49. On or about October 27, 2008, Colony Cove filed a complaint in this  
 26 Court against the City asserting facial and as-applied takings and due process  
 27 claims, a claim for declaratory relief, and a pendent state claim seeking a writ of

1 administrative mandate under California law. *See Colony Cove Props. v. City of*  
 2 *Carson*, C.D. Cal. Case No. CV 08-7065 PA (JWJx) (Docket No. 1).

3 50. The City moved to dismiss the Complaint.

4 51. On or about November 24, 2009, the Court granted the City's motion.  
 5 *See id.* (Docket No. 28). The Court held that the facial claims (and declaratory relief  
 6 claims based on them) were barred by the statute of limitations because the City's  
 7 rent control guidelines did not restart the limitations period on the original rent  
 8 control ordinance. None of those claims are asserted in this action.

9 52. With respect to the as-applied takings claim, the Court held that the  
 10 claim was not ripe under *Williamson County Regional Planning Commission v.*  
 11 *Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), because Colony Cove had not  
 12 yet pursued an action in state court. In order to satisfy *Williamson County*, this  
 13 Court held, Colony Cove must first seek, and be denied, compensation through the  
 14 procedures the state has provided for doing so. Until that time, any federal takings  
 15 claim has not ripened. In the context of a rent-control ordinance, this Court held  
 16 that Colony Cove must first seek an adjustment under *Kavanau v. Santa Monica*  
 17 *Rent Control Board*, 16 Cal. 4th 761 (1997).

18 53. The Court also dismissed Colony Cove's as-applied substantive due  
 19 process claim and declined to exercise supplemental jurisdiction over Colony  
 20 Cove's pendent writ claim.

21 54. Colony Cove timely appealed the Court's ruling on the federal claims  
 22 to the United States Court of Appeals for the Ninth Circuit, while filing a state writ  
 23 claim in Los Angeles Superior Court to ripen its federal claims consistent with this  
 24 Court's dismissal order. The state court action raised only state law claims.

25 55. Colony Cove filed the state writ claim, *Colony Cove Properties, LLC v.*  
 26 *City of Carson*, LASC Case No. BS124253, which pertained to the Year 1  
 27 Applications, on or about December 23, 2009. Colony Cove also filed a writ claim  
 28 in state court pertaining to the Year 2 Applications, *Colony Cove Properties, LLC v.*

1 *City of Carson*, LASC Case No. BS124776, on or about February 3, 2010. Colony  
2 Cove contended in its petitions, inter alia, that the methodology the City employed  
3 to determine the rents Colony Cove could charge was unfair and contrary to  
4 California law because, among other things, at a minimum the Board should have  
5 permitted rent increases based on the full rate of inflation according to the CPI,  
6 instead of a fraction thereof, and that the Board had failed properly to consider the  
7 fair-return application. In both of these writ petitions, Colony Cove expressly  
8 reserved all of its rights to return and file a federal claim in federal court under  
9 *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964),  
10 stating: “Under *England* and its progeny, [Colony Cove] hereby reserves any and all  
11 federal claims arising from the facts alleged herein for litigation in federal court and  
12 gives notice to all parties and the Court that any resolution of state-law issues herein  
13 shall not constitute a binding resolution of parallel or related federal issues and shall  
14 have no claim or issue preclusion for [Colony Cove’s] federal claims.”

15        56. The City filed, and the Superior Court granted, a motion to strike  
16 Colony Cove's *England* reservation.

17        57. On or about July 26, 2010, the Superior Court denied Colony Cove's  
18 writ based on the City's decision on the Year 1 Applications. The Superior Court  
19 applied an extremely deferential standard of review mandated by California law and  
20 concluded that the City "may choose to regulate pursuant to any fairly constructed  
21 formula." The Superior Court upheld the use of the Board's analysis, noting that  
22 "the landlord cannot insist that a fair return must be calculated on the basis of what  
23 it paid for the mobile home park."

24        58. Colony Cove and the City acknowledged that the same trial judge was  
25 going to make the same ruling on the City's decision on the Year 2 Applications, so  
26 they stipulated to judgment in favor of the City in that case.

27        59. Colony Cove appealed the two judgments, where they were  
28 consolidated by the California Court of Appeal.

1           60. Colony Cove also timely filed writ petitions based on the City's  
 2 decisions involving the Year 3, Year 4, and Year 5 Applications. Colony Cove also  
 3 made *England* reservations in these cases. These cases were stayed pending the  
 4 outcome of the appeal involving Years 1 and 2.

5           61. On or about March 28, 2011, the Ninth Circuit affirmed this Court's  
 6 judgment in its entirety. *See Colony Cove Props., LLC v. City of Carson*, 640 F.3d  
 7 948 (9th Cir. 2011). The United States Supreme Court then denied Colony Cove's  
 8 petition for a writ of certiorari.

9           62. On or about October 21, 2013, the California Court of Appeal issued its  
 10 decision. Based on substantial evidence review of the Board's findings, the Court of  
 11 Appeal affirmed the trial court's denial of the writs for Years 1 and 2. The Court of  
 12 Appeal concluded that the Board's use of an "approach [that] does not focus on how  
 13 much the owner chose to pay for a rent-controlled property or how the purchase was  
 14 financed." "The MNOI approach ... does not take land acquisition cost, including  
 15 debt service, into account." Citing prior precedent applying California law, the  
 16 Court of Appeal further noted that the approach used by the Board "rather than  
 17 designating a particular rate of return as fair" simply "preserve[s] prior [net  
 18 operating income] levels." The principal benefit to this approach, the Court of  
 19 Appeal concluded, was administrability. Determining an actual fair rate of return  
 20 "may ... be problematic to administer, because an owner's equity can be greatly  
 21 affected by individual differences in methods and costs of financing." The Court of  
 22 Appeal also adopted the hypothetical that debt service arrangements *could* be  
 23 manipulated for the purposes of obtaining large rent increases. But like the Board  
 24 before it, the Court of Appeal found no manipulation on the part of Colony Cove.

25           63. The Court of Appeal, nonetheless, concluded that based on existing  
 26 state law precedent, the Board could under state law disregard purchase price and  
 27 debt service, even if both were negotiated in arms-length, market-based, and fair  
 28

1 transactions. The Court of Appeal thus adopted the Board's position that California  
 2 law did not prevent the City from disregarding debt service entirely.

3       64. The Court of Appeal, however, reversed the Superior Court's striking  
 4 of the *England* reservation. The Court of Appeal noted that this Court had  
 5 dismissed the federal Takings claim under *Williamson County*. "Having received a  
 6 clear message from the district court, [Colony Cove] ... included the *England*  
 7 reservations in order to advise the court and [the City and the Board] that it had no  
 8 intention of resolving its federal constitutional claims in state court, but would resort  
 9 to federal court resolution of such claims when the matters were ripe." Colony  
 10 Cove's *England* reservation, though not necessary to preserve Colony Cove's rights  
 11 to return to federal court to adjudicate federal claims, was "helpful to both the court  
 12 and the opposing party" by indicating that Colony Cove "wishe[d] to limit the state  
 13 court action to state issues." Striking the reservation would create a risk of  
 14 "unnecessary confusion and duplication, as the litigant [such as Colony Cove] may  
 15 feel compelled to raise federal issues in the state action although he or she intends to  
 16 litigate the matters in federal court."

17       65. The California Court of Appeal thus confirmed explicitly that Colony  
 18 Cove's action was premised solely on California law. Colony Cove sought, in its  
 19 petition for a writ of administrative mandamus, an increase in the permissible rent it  
 20 may charge. It premised its claim on the fact that the Board's method for setting  
 21 rents in the Park and refusal to permit a full measure of CPI in setting rent increases,  
 22 all violated California law and the City's own Ordinance and Guidelines. The Court  
 23 of Appeal, in restoring the *England* reservation recognized that no federal issues had  
 24 been litigated. In particular, Colony Cove never asserted in the state court action,  
 25 and the Court of Appeal decision never reached, the question of whether a total  
 26 disregard of reasonable, arms-length purchase price and debt service violates the  
 27 Fifth and Fourteenth Amendments of the U.S. Constitution. Nor did the Court of  
 28

1 Appeal determine whether the Board's disregard of debt service disrupted Colony  
 2 Cove's reasonable, investment-backed expectations.<sup>3</sup>

3       66. Colony Cove filed a petition for review with the California Supreme  
 4 Court, which was denied. The Year 1 and 2 judgments became final on January 28,  
 5 2014.

6       67. Based on the rulings in the Year 1 and 2 case, Colony Cove and the  
 7 City have agreed in principle that the same result would obtain from the California  
 8 courts in the Year 3-5 writ petitions. Although the petitions are contested, the  
 9 parties have agreed in principle to stipulate to judgment in those cases for efficiency.

10      68. Accordingly, all state court remedies have been exhausted, and Colony  
 11 Cove's claims are ripe for adjudication in federal court.

12      69. Colony Cove expects that the City will argue that Colony Cove's  
 13 federal claims are now precluded under 28 U.S.C. § 1738 and *San Remo Hotel, L.P.*  
 14 v. *City and County of San Francisco*, 545 U.S. 323 (2005), by the parties' litigation  
 15 of Colony Cove's rights under California law. Colony Cove believes the argument  
 16 is incorrect for at least two reasons. First, under California law, for issue preclusion  
 17 to apply, the issue decided must be "identical with the one now presented." See *San*  
 18 *Remo*, 545 U.S. at 335 n.14. In the state court litigation, the issue was whether,  
 19 under state law, the City and the Board could exclude Colony Cove's debt service  
 20 when setting rents. The California courts answered that question in the affirmative.  
 21 In this case, the issue is whether application of a state rule that permits exclusion of  
 22 debt service by the City and the Board such that it forced Colony Cove to lose  
 23 money repeatedly constitutes a taking under the Fifth Amendment. Second, the

---

24  
 25 <sup>3</sup> Demonstrating the exclusion of federal issues, the Court of Appeal's decision cited  
 26 no federal cases (other than to describe the procedural background of this litigation's  
 27 history in federal court and in the section restoring Colony Cove's *England*  
 28 *reservation*). Nor did the decision ever speak of, or analyze, "investment-backed  
 expectations," a hallmark of federal takings law.

1 California courts applied a very deferential standard of review (the substantial  
 2 evidence test) when under governing U.S. Supreme Court case law, the more  
 3 stringent independent judgment test must be applied to cases involving a property  
 4 owner's constitutional rights.

5 **FIRST CLAIM FOR RELIEF**

6 **(Violation of the Takings Clause of the Fifth Amendment)**

7 **Under 42 U.S.C. § 1983 – As-Applied Takings Claim)**

8 70. Colony Cove repeats and realleges each and every allegation contained  
 9 in paragraphs 1 to 69, and incorporates them herein by reference.

10 71. By denying Colony Cove the ability to make any profit from its  
 11 investment in the Park, the City and the Board have effected a temporary and  
 12 categorical taking by prohibiting, for some or all of the Years relevant in this  
 13 litigation, all economically beneficial use of the land. Under California law, Colony  
 14 Cove is not permitted to close the Park and use it for another economic purpose, nor  
 15 is Colony Cove permitted to evict the Park's current tenants, nor is Colony Cove  
 16 permitted to charge a rent that would result in any profit, much less a fair return on  
 17 investment. As a consequence, Colony Cove is forced to operate the Park at a loss.  
 18 Such government imposition on a landowner's prerogative to make economic use of  
 19 its land constitutes a violation of the Fifth and Fourteenth Amendments to the U.S.  
 20 Constitution under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

21 72. Even if something less than all economically viable use had been  
 22 destroyed by the City and the Board's conduct denying reasonable increases in rent  
 23 described herein, that conduct constitutes an unconstitutional taking under *Penn*  
 24 *Central Transportation Co. v. New York City*, 438 U.S. 104 (1978). The City's  
 25 overly-restrictive rents have had a significant economic impact on Colony Cove,  
 26 both in terms of a substantial loss of property value and forced operating losses  
 27 exceeding \$4 million. The City also directly interfered with Colony Cove's  
 28 legitimate, investment-backed expectation that it could profit with reasonable rent

LAW OFFICES  
**GILCHRIST & RUTTER**  
 PROFESSIONAL CORPORATION  
 1299 OCEAN AVENUE, SUITE 900  
 SANTA MONICA, CALIFORNIA 90401-1000  
 TEL (310) 393-4000 • FAX (310) 394-4700

1 levels and that its debt service would be considered when the City and the Board set  
2 rents. By forcing Colony Cove to operate at a loss year-after-year solely to serve the  
3 government's interest in subsidizing housing, the City's conduct was tantamount to  
4 a physical, government takeover of the Park.

5       73. As a result of the City's unconstitutional actions, Colony Cove is  
6 entitled to just compensation and/or damages in an amount to be proven at trial.  
7 Colony Cove is also entitled to an award of attorneys' fees under 42 U.S.C.  
8 § 1988(b).

## **SECOND CLAIM FOR RELIEF**

### **(Violation of the Due Process Clause of the Fourteenth Amendment)**

**Under 42 U.S.C. § 1983)**

74. Colony Cove repeats and realleges each and every allegation contained in paragraphs 1 to 73, and incorporates them herein by reference.

75. California law permits judicial review of administrative bodies, such as the Board, only by seeking a writ of administrative mandamus. The standard of review a California court applies when deciding a writ action is the substantial evidence standard. Substantial evidence review does not permit a California court to exercise its independent judgment; rather a court asks whether a reasonable mind *might* accept the evidence before the administrative body as adequate to support the conclusion. A California court is bound to consider the facts in the light most favorable to the administrative decision, giving that decision every reasonable inference and resolving all conflicts in the decision's favor.

76. In *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U.S. 287 (1920), the Supreme Court held that where a property owner claims a taking of its property, judicial review of the administrative action by a state court must be de novo or else the property owner's due process rights are violated. *See id.* at 289 ("In all such cases, if the owner claims confiscation of his property will result, the state must provide a fair opportunity for submitting that issue to a judicial tribunal for

1 determination upon its own independent judgment as to both law and facts;  
2 otherwise the order is void because in conflict with the due process clause,  
3 Fourteenth Amendment.”). In other words, due process is denied whenever a taking  
4 occurs and the property owner is denied the opportunity to seek the independent  
5 judgment of a court.

6        77. No California court has exercised its independent judgment of any of  
7 the Board's decisions in this case. The review of the Board's decision denying  
8 Colony Cove a reasonable rent increase has been deferential; far too deferential for  
9 the vindication of these important constitutional rights.

10        78. In fact, cities know that they can game the system under California law  
11 because merely having a single putative expert testify is sufficient to support the  
12 administrative decision – whatever it is. *See MHC Operating Ltd. P'ship v. City of*  
13 *San Jose*, 106 Cal. App. 4th 206, 225 (2003) (“Dr. Baar’s testimony alone  
14 constitutes substantial evidence...”).

15        79. As a result of the California courts' deferential review to the City's  
16 decisions described herein, Colony Cove has been harmed. Colony Cove therefore  
17 requests that this Court engage in independent review of the administrative records  
18 for each of the petitions described herein and award damages against the City based  
19 on the appropriate, nonconfiscatory rent-levels set by the Court. In the alternative,  
20 Colony Cove requests that the Court issue an injunction commanding the City to  
21 permit Colony Cove to charge rents at appropriate, nonconfiscatory levels in an  
22 amount to be proved at trial.

23        80. Colony Cove is also entitled to an award of attorneys' fees under 42  
24 U.S.C. § 1988(b).

### **THIRD CLAIM FOR RELIEF**

### **(Declaratory Relief)**

27        81. Colony Cove repeats and realleges each and every allegation contained  
28 in paragraphs 1 to 80, and incorporates them herein by reference.

1        82. An actual controversy has arisen and now exists between Colony Cove  
2 and the City relative to the validity and constitutionality of the City's Rent Control  
3 Law and whether it constitutes a taking as applied to Colony Cove.

4        83. A judicial declaration is necessary and appropriate at this time to settle  
5 the parties' disputes concerning the validity and constitutionality of the City's Rent  
6 Control Law.

## **PRAYER FOR RELIEF**

**8** WHEREFORE, Plaintiff prays for judgment as follows:

9           A. A declaration that the City's Rent Control Law, as applied to Colony  
10 Cove, is unconstitutional, invalid, and/or constitutes an uncompensated taking in  
11 violation of the Takings Clause of the Fifth Amendment of the United States  
12 Constitution.

13 B. An injunction against the City and the Board preventing enforcement of  
14 the City's Rent Control Law against Colony Cove.

15 C. Damages and/or just compensation in an amount to be proven at trial,  
16 as well as and alternatively nominal damages.

17 D. An injunction commanding the City to allow Colony Cove to charge  
18 rents in an amount to be proven at trial.

**E. An award of attorneys' fees and costs.**

**20** F. Such other and further relief as the Court deems just and proper.

22 | DATED: April 28, 2014

**GILCHRIST & RUTTER**  
Professional Corporation

&

O'MELVENY & MYERS LLP

By

Kevin M. Yopp  
Attorneys for Plaintiff  
Colony Cove Properties, LLC

## **DEMAND FOR JURY TRIAL**

Colony Cove hereby demands a jury trial on all issues to the extent permitted by law.

DATED: April 28, 2014

**GILCHRIST & RUTTER**  
Professional Corporation

&

O'MELVENY & MYERS LLP

Bv

Kevin M. Yopp  
Attorneys for Plaintiff  
Colony Cove Properties, LLC

**GILCHRIST & RUTTER**  
PROFESSIONAL CORPORATION  
1299 OCEAN AVENUE, SUITE 900  
SANTA MONICA, CALIFORNIA 90210-10  
TELETEL (310) 393-4000 • FAX (310) 394-4

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Philip S. Gutierrez and to Magistrate Judge Patrick J. Walsh.

The case number on all documents filed with the Court should read as follows:

2:14-cv-03242-PSG(PJWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the assigned Magistrate Judge has been designated to hear discovery-related motions. All discovery-related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

April 28, 2014

Date

By APEDRO

Deputy Clerk

---

---

ATTENTION

*A copy of this Notice must be served on all parties served with the Summons and Complaint (or, in cases removed from state court, on all parties served with the Notice of Removal) by the party who filed the Complaint (or Notice of Removal).*

UNITED STATES DISTRICT COURT  
for the  
CENTRAL DISTRICT OF CALIFORNIA

COLONY COVE PROPERTIES, LLC, a Delaware limited liability company

*Plaintiff(s)*

v.

CITY OF CARSON, a municipal corporation; CITY OF CARSON MOBILEHOME PARK RENTAL REVIEW BOARD, a public administrative body; and DOES 1 to 10, inclusive

*Defendant(s)*

Civil Action No.

**CV14-03242-PSG(PJWx)**

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

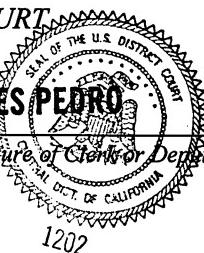
Kevin M. Yopp (Bar No. 218204)  
kyopp@gilchristrutter.com  
Gilchrist & Rutter  
1299 Ocean Avenue, Suite 900  
Santa Monica, CA 90401  
Telephone: (310) 393-4000

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

ANDRES PEDRO

Signature of Clerk or Deputy Clerk



1202

Date: APR 28 2014

## CIVIL COVER SHEET

(a) PLAINTIFFS ( Check box if you are representing yourself  )  
**COLONY COVE PROPERTIES, LLC**

DEFENDANTS ( Check box if you are representing yourself  )

**CITY OF CARSON, a municipal corporation; CITY OF CARSON MOBILEHOME PARK RENTAL REVIEW BOARD, a public administrative body; and DOES 1 to 10, inclusive**

(b) County of Residence of First Listed Plaintiff **Los Angeles**  
*(EXCEPT IN U.S. PLAINTIFF CASES)*

County of Residence of First Listed Defendant **Los Angeles**  
*(IN U.S. PLAINTIFF CASES ONLY)*

(c) Attorneys (*Firm Name, Address and Telephone Number*) If you are representing yourself, provide the same information.  
**Kevin M. Yopp, Esq. (Bar No. 218204)  
kyopp@gilchristrutter.com  
Gilchrist & Rutter  
1299 Ocean Avenue, Suite 900, Santa Monica, CA 90401  
Telephone: (310) 393-4000; Facsimile: (310) 394-4700**

Attorneys (*Firm Name, Address and Telephone Number*) If you are representing yourself, provide the same information.

**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- |   |   |
|---|---|
| <input type="checkbox"/> 1. U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2. U.S. Government Defendant | <input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)   |

**III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only**  
(Place an X in one box for plaintiff and one for defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. ORIGIN** (Place an X in one box only.)

- |  |  |   |  |  |                                     |
|--|--|---|--|--|-------------------------------------|
| <input checked="" type="checkbox"/> 1. Original Proceeding | <input type="checkbox"/> 2. Removed from State Court | <input type="checkbox"/> 3. Remanded from Appellate Court | <input type="checkbox"/> 4. Reinstated or Reopened | <input type="checkbox"/> 5. Transferred from Another District (Specify) <input type="checkbox"/> | <b>6. Multi-District Litigation</b> |
|--|--|---|--|--|-------------------------------------|

**V. REQUESTED IN COMPLAINT: JURY DEMAND:**  Yes  No (Check "Yes" only if demanded in complaint.)

**CLASS ACTION under F.R.Cv.P. 23:**  Yes  No **MONEY DEMANDED IN COMPLAINT:** \$ To be proven at trial.

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
**28 U.S.C. § 1983 Fifth Amendment As-Applied Taking**

**VII. NATURE OF SUIT** (Place an X in one box only).

OTHER STATUTES	CONTRACT	REAL PROPERTY/CONT	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	<b>TORTS PERSONAL INJURY</b>	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 530 General	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 315 Airplane	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> Other	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 154 Recovery of Stockholders' Suits	<input type="checkbox"/> 340 Marine	<b>BANKRUPTCY</b>	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 155 Recovery of Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<b>FORFEITURE/PENALTY</b>	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 156 Recovery of Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 157 Recovery of Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<b>LABOR</b>	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 158 Recovery of Product Liability	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 710 Fair Labor Standards Act		
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 159 Recovery of Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 720 Labor/Mgmt. Relations		
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 160 Recovery of Product Liability	<input type="checkbox"/> 443 Housing/ Accomodations	<input type="checkbox"/> 740 Railway Labor Act		
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 161 Recovery of Product Liability	<input type="checkbox"/> 445 American with Disabilities- Employment	<input type="checkbox"/> 751 Family and Medical Leave Act		
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 162 Recovery of Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 790 Other Labor Litigation		
	<b>REAL PROPERTY</b>	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Product Liability	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	
		<input type="checkbox"/> 368 Asbestos Product Liability			
		<input type="checkbox"/> 369 Product Liability			
		<input type="checkbox"/> 370 Product Liability			
		<input type="checkbox"/> 371 Product Liability			
		<input type="checkbox"/> 372 Product Liability			
		<input type="checkbox"/> 373 Product Liability			
		<input type="checkbox"/> 374 Product Liability			
		<input type="checkbox"/> 375 Product Liability			

FOR OFFICE USE ONLY:

Case Number:

CV14-03242

**VIII. VENUE:** Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<b>Question A: Was this case removed from state court?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:	
	<input type="checkbox"/> Los Angeles	
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	
	<input type="checkbox"/> Orange	
	<input type="checkbox"/> Riverside or San Bernardino	
	INITIAL DIVISION IN CACD IS:	
	Western	
	Western	
	Southern	
	Eastern	

<b>Question B: Is the United States, or one of its agencies or employees, a party to this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:	
	A PLAINTIFF?      A DEFENDANT?	
	Then check the box below for the county in which the majority of DEFENDANTS reside.	
	<input type="checkbox"/> Los Angeles <input type="checkbox"/> Los Angeles	
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	
	Western	
<input type="checkbox"/> Orange <input type="checkbox"/> Orange		
<input type="checkbox"/> Riverside or San Bernardino <input type="checkbox"/> Riverside or San Bernardino		
<input type="checkbox"/> Other <input type="checkbox"/> Other		
	Southern	
	Eastern	
	Western	

Question C: Location of plaintiffs, defendants, and claims? (Make only one selection per row)	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>C.1. Is either of the following true? If so, check the one that applies:</b> <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D  Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	<b>C.2. Is either of the following true? If so, check the one that applies:</b> <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C  Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓	
	Your case will initially be assigned to the <b>WESTERN DIVISION.</b> Enter "Western" in response to Question D below.	

<b>Question D: Initial Division?</b>	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western Division

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed?  NO  YES

If yes, list case number(s): \_\_\_\_\_

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case?  NO  YES

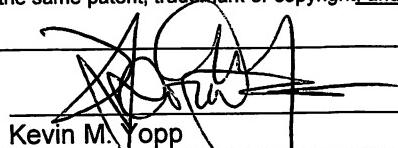
If yes, list case number(s): CV 08-7065 PA (JWJx) \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- A. Arise from the same or closely related transactions, happenings, or events; or
  - B. Call for determination of the same or substantially related or similar questions of law and fact; or
  - C. For other reasons would entail substantial duplication of labor if heard by different judges; or
  - D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT):



DATE: April 28, 2014

Kevin M. Yopp

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))